(3)

IN THE HIGH COURT OF JUDICATURE CHHATTISGARH AT BILASPUR

W.P.NO. 4703 / 2004

Petitioner :

Pramod Luniya
S/o Late Shri Dhanichand Luniya, Aged about 40 years, Mahamaya Ward No.4 Kawardha, Dist : Kabirdham-(C.G.)

Versus

Respondents :

1. State of Chhattisgarh Through Department of Urban Administration Mantralaya Raipur, Dist : Raipur-(C.G.)

2. Chhattisgarh State Election Commission Through Commissioner, Raipur, Dist : Raipur-(C.G.)

3. The Returning Officer, Municipality Election Kabirdham

4. Santosh Gupta
S/o Jagannath Gupta,
Aged about 37 years, Ward No.10, Kawardha, Dist : Kabirdham.

P.R. 4775/04
Present ... Miyaji
date ... 07-12-04

WRIT PETITION U/A 226 / 227 OF THE CONSTITUTION OF INDIA

COPY

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

W.P. No. 4703/04

मामला क्रमांक ..... / **सन्** 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

8-12-2004

Shri Prafull Bharat, counsel for the petitioner.
Shri Sanjay S. Agrawal, Deputy Government Advocate for respondent No.1/State.
Shri Pramod Verma, Additional Advocate General for respondent Nos.2 and 3.
Shri Malay Kumar Bhaduri, counsel for the respondent No.4.

Heard on admission and M.(W.)P.No.4995/2004 for interim relief.

Under Chhattisgarh Municipalities Act, 1961, for contesting election as a President or Counsellor, various qualifications have been prescribed, and if any person, who has more than two living children, one of whom is born after 26-1-2001, is disqualified to contest the same. Petitioner Pramod Luniya filed nomination and disclosed that he has three children, and all of them have taken birth before 26-1-2001. Respondent No.4, with various documents, challenged the date of birth of third baby of petitioner, and in his objection, duly supported by affidavit and other documents, he narrated that the third baby took birth on 9-9-2002. Returning Officer, in his summary enquiry, regarding birth of third baby, has considered the certificate issued by Dr.Subir Shrivastava, the record of Community Health Centre, a Government Hospital wherein the baby was provided D.P.T. and B.C.G. vaccinations and the affidavit filed by the objector/respondent No.4, and also considered one document i.e.

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आदेश पत्रक (पूर्वानुबद्ध)

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birth certificate, issued by Chief Municipal Officer, Kawardha, filed by the petitioner, wherein the date of birth has been entered as 5-1-2001. After giving weightage to the documents and hearing both the parties, Returning Officer has come to the conclusion that the petitioner's third baby took birth after 26-1-2001, and accordingly declared the petitioner disqualified for the election.

The objector/respondent No.4 filed an affidavit before Returning Officer in support of his contentions. That affidavit was not controverted by the petitioner. Dr.Subir Shrivastava of Vimal Surgical Nursing Home issued a certificate certifying that the third baby of the petitioner took birth on 9-9-2002 at 11.30 P.M. Under D.P.T./Polio Tikakaran Abhiyan, the third baby of the petitioner was got vaccinated in Government Hospital, wherein the date of birth of that baby was mentioned as 10-9-2002. That date of birth is always given by the parents who take their children for vaccination. From all the aforesaid documents, it is apparent that the third baby of the petitioner took birth after 26-1-2001. In rebuttal, petitioner has filed only one document i.e. birth certificate issued by Nagar Palika, Kabir Dham on 10-9-2004, wherein the date of birth is mentioned as 5-1-2001. This certificate was not obtained soon after the birth or within reasonable time. Therefore, learned Returning Officer, in giving weightage to the other documents, duly supported by affidavit, did not commit any

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मामला क्रमांक ..... **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

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	illegality or error in which this Court may interfere under its writ jurisdiction. **The petition, filed under Articles 226/227 of the Constitution, is liable to be dismissed and is accordingly dismissed summarily.** **In the light of above orders, M.(W.)P.No.4995/2004 for interim relief and I.A.No.9349/2004 for urgent hearing stand disposed of.** **Sd/-** **L.C. Bhadoo** **Judge**	

G.Singh